

**ITAL General Construction, Inc. and its alter ego
LATI Development, Inc. and Bricklayers & Allied
Craftsmen, Local 11, AFL-CIO. Case 3-
CA-20225**

March 25, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND BRAME

Upon a charge filed by the Union on August 8, 1996, the General Counsel of the National Labor Relations Board issued a complaint on October 8, 1996, against ITAL General Construction, Inc. (Respondent ITAL), and its alter ego and single employer LATI Development, Inc. (Respondent LATI), collectively the Respondents, alleging that they had violated Section 8(a)(1) and (5) of the National Labor Relations Act. Copies of the charge and complaint were properly served on the Respondents. On October 8, 1996, a complaint and notice of Hearing issued in this proceeding, and copies were served upon the Respondents. Although the Respondents were duly notified that they were each required to file an answer, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, and that if they failed to do so the Board would consider the allegations in the complaint to be admitted as true, neither Respondent filed an answer within the prescribed time. By certified mail on February 13, 1997, the General Counsel advised each of the Respondents that their failure to file an answer by the close of business on February 18, 1997, would bring about a Motion for Summary Judgment. On February 18, 1997, the Regional Office received a letter from Respondent LATI, and on February 19, 1997, the Regional Office received a letter from Respondent ITAL.

On February 21, 1997, the General Counsel filed a Motion for Summary Judgment, with exhibits attached, on the grounds that the letters and attachments filed by the Respondents do not constitute answers within the meaning of Section 102.20 of the Board's Rules and Regulations and were not served on the other party. On February 26, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents did not file responses to the Motion for Summary Judgment or to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be

deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The Regional Office did not receive a response from either Respondent until more than 4 months after the service of the complaints. Respondent ITAL's response was not received by February 18, 1997, and was therefore also untimely under the extended time limits Respondents were given. Further, Section 102.21 requires that "[i]mmediately upon the filing of his answer, respondent shall serve a copy thereof on the other parties." Neither Respondent served a copy of its purported answer on Bricklayers & Allied Craftsmen, Local 11, AFL-CIO, the other party to this case.

Additionally, Section 102.20 provides that "[t]he respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement acting as a denial." The letter received from Respondent LATI was written by its accountant, and only addressed issues related to corporate ownership. The letter received from Respondent ITAL similarly denies common ownership and directs the Board to a prior statement given to the Department of Labor at some unspecified time. Both letters fail to address specifically any of the facts alleged in the complaint, and address only the lack of common ownership, which was not disputed in the complaint. Finally, the Respondents made no claims that they are without knowledge regarding the complaint allegations. We find these letters to be insufficient to constitute answers to the complaint under Section 102.20 of the Board's Rules and Regulations because they do not specifically admit, deny, or explain each of the facts alleged in the complaint. See, e.g., *O.P. Held, Inc.*, 286 NLRB 676 (1987).

In the absence of good cause being shown for the failure to file timely and proper answers that specifically address the complaint allegations, we grant the General Counsel's Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent ITAL and Respondent LATI, New York corporations with offices and places of business at 507 W. Commercial Street, East Rochester, New York, are engaged as brick and masonry contractors in the building and construction industry.

¹ Rocco Albano, the owner of Respondent ITAL, filed a response on behalf of his company, and John D. Behan, the accountant for Respondent LATI, filed a response on behalf of his client. Even treating Respondents as pro se, we find that their answers are insufficient under the Board's rules as applied to pro se Respondents. See, e.g., *Physicians Answering Service*, 306 NLRB 199 (1992).

During the 12-month period ending December 31, 1995, Respondent ITAL, in conducting its business operations as described above, provided services valued in excess of \$50,000 for enterprises directly involved in interstate commerce. We find that the Respondent ITAL, and its alter ego and single employer Respondent LATI, as found below, are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Bricklayers & Allied Craftsmen, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About March 1996, Respondent LATI was established by Respondent ITAL as a subordinate instrument to, and a disguised continuation of, Respondent ITAL. At all material times, Respondent ITAL and Respondent LATI have been affiliated business enterprises with common management and supervision; have shared common premises and facilities; have interchanged personnel with each other; and have held themselves out to the public as a single-integrated business enterprise. Based on this conduct, Respondent ITAL and Respondent LATI are, and have at all material times been, alter egos and a single employer within the meaning of the Act.²

The following employees of the Respondents constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees performing work as described in Article 14 (Trade Jurisdiction) of the 1995–1998 collective bargaining agreement between The Building Trades Employers Association and the Construction Industry Association of Rochester, New York, and Bricklayers & Allied Craftsmen, Local 11, AFL-CIO.

At all material times the Building Trades Employers Association and the Construction Industry Association of Rochester, herein called the Associations, have been organizations engaged in the construction industry, one purpose of which is to represent their employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union.

About April 7, 1995, the Associations and the Union entered into a collective-bargaining agreement, herein-after called the Association Agreement, effective from May 1, 1995 through April 30, 1998. About May

1995, Respondent ITAL entered into a Non-Association Employer Agreement which at all material times bound Respondent ITAL to the terms and conditions of employment of the Association Agreement. For the period of May 1995 to April 30, 1998, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

Since about March 6, 1996, the Respondents have failed and refused to apply the terms and conditions of the Non-Association Employer Agreement to the employees of Respondent LATI.

The Union, by letter from its attorneys dated July 17, 1996, requested that Respondent ITAL furnish the Union with certain information which is necessary for, and relevant to, the Union's performance of its duties. Since that date, Respondent ITAL, by its owner and president Rocco Albano, has failed and refused to furnish the Union with this information.

By the conduct described above, the Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees, in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. The Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to bargain collectively with the representative of its employees by failing to comply with the Union's July 17, 1996 request that Respondent ITAL provide it with certain necessary and relevant information and by, since about March 6, 1996, refusing to apply to the employees of Respondent LATI the terms and conditions of the collective-bargaining agreement with the Union, the Respondents engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

REMEDY

Having found that the Respondents engaged in certain unfair labor practices, we shall order them to cease and desist and to take the following affirmative action designed to effectuate the policies of the Act.

We shall order that Respondent ITAL provide the Union with all of the information requested in the Union's letter of July 17, 1997. We shall also order the Respondents to apply the terms and conditions of the Non-Association Employer Agreement to the employees of Respondent LATI.

Further, the Respondents will be ordered to make whole their employees, as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), for any losses they may have suffered as a result of the Respondents'

² Even if we were to consider the Respondents' "answers," they do not deny either the alter ego or single employer allegations; they merely deny common ownership, which neither is alleged in the complaint nor is essential to a finding of alter ego, e.g., *Cofab, Inc.*, 322 NLRB 162, 163 (1996), or of single-employer, e.g., *Hydrolines, Inc.*, 305 NLRB 416, 417 (1991).

failure to apply to Respondent LATI's employees the current collective-bargaining agreement to which it is bound by virtue of the Non-Association Employer Agreement, commencing with the 10(b) period, including contributions and payments the Union and the contractual trust funds would have received, with interest computed in the manner prescribed by *New Horizons for the Retarded*, 283 NLRB 1173 (1987); and *Merryweather Optical Co.*, 240 NLRB 1213 (1979). Finally, the Respondents will be required to post notices to employees attached as the appendix at any jobsite currently in progress within the geographical jurisdiction of the applicable agreement and at its place of business in Rochester, New York.

ORDER

The National Labor Relations Board orders that the Respondents, ITAL General Construction, Inc., and its alter ego and single employer LATI Development, Inc., East Rochester, New York, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing to furnish the Union, Bricklayers & Allied Craftsmen, Local 11, AFL-CIO, with information necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

(b) Failing and refusing to apply the terms and conditions of the current collective-bargaining agreement to which they are bound, and refusing to recognize the Union as the employee representative for the following unit employees of Respondent LATI:

All employees performing work as described in Article 14 (Trade Jurisdiction) of the 1995-1998 collective bargaining agreement between The Building Trades Employers Association and the Construction Industry Association of Rochester, New York, and Bricklayers & Allied Craftsmen, Local 11, AFL-CIO.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union with the information that it requested on July 17, 1997.

(b) Apply the terms of the Non-Association Agreement to the unit employees of Respondent LATI.

(c) Make whole employees for any losses suffered as a result of the Respondents' failure to honor the collective-bargaining agreement in the manner specified in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other

records necessary to analyze the amount of backpay and other payments due under the terms of this Order.

(e) Within 14 days after service by the Region, post at their current jobsites within the geographical area encompassed by the appropriate unit herein and at their places of business in Rochester, New York, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 3 after being signed by the Respondents' representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since March 6, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to apply the terms of the current collective-bargaining agreement or refuse to recognize the Bricklayers & Allied Craftsmen, Local 11, AFL-CIO as the employee representative in the following appropriate unit:

All of our employees performing work as described in Article 14 (Trade Jurisdiction) of the 1995-1998 collective bargaining agreement between The Building Trades Employers Association and the Construction Industry Association of

Rochester, New York, and Bricklayers & Allied Craftsmen, Local 11, AFL-CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL provide the Union with the information it requested on July 17, 1997.

WE WILL make our employees whole for our failure to honor our agreement with the Union, including contributions or payments to which the Union and the contractual trust funds are entitled under the agreement, with interest.

ITAL GENERAL CONSTRUCTION, INC.
AND ITS ALTER EGO LATI DEVELOPMENT, INC.